



Engineering Services Department
City of Frisco, Texas

Memorandum

To: Honorable Mayor Maso and Members of the Frisco City Council

Cc: George Purefoy, City Manager
Ron Patterson, Assistant City Manager
Jim Gandy, Frisco Economic Development Corporation
Cissy Sylo, P.E., Director of Engineering Services
John Lettellier, Director of Planning and Development Services

From: John Eaglen, Strategic Services Manager

Date: December 16, 2008

Subject: Consider and act upon adoption of a Resolution authorizing the City Manager to execute a Development Agreement by and between the City of Frisco and Vista Franchise Holdings, LLC for the construction of Offsite Sanitary Sewer Improvements extending from the Rowlett Creek Metering Station to Independence Parkway

Action Requested: City Council consideration and approval of a Resolution authorizing the City Manager to execute a Development Agreement by and between the City of Frisco and Vista Franchise Holdings, LLC (the "Developer") of Richardson, Texas, for the construction of Offsite Sanitary Sewer Improvements extending from the Rowlett Creek Metering Station to Independence Parkway.

Background Information: The proposed Development Agreement establishes the framework of responsibilities relating to the design and construction of approximately 5,000 LF of 21" sanitary sewer line, and the upsizing of approximately 460 LF of existing 27" sanitary sewer line to 36" sanitary sewer line, extending from the Rowlett Creek Metering Station westward to Independence Parkway, including the boring required to construct the extension of the sewer line westward across Independence Parkway (the "Offsite Sanitary Sewer Improvements").

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The Developer is planning to move forward with the S.H. 121 and Independence Retail Center (the "Retail Center"), a 14.8± acre planned commercial development; a portion thereof is anticipated to include a Wingate by Wyndham Hotel, a four-story hotel with at least 100 rooms, portico, indoor pool, at least 15 full-time employees and a minimum commercial building permit value of \$8,300,000.00, which does not include land (the "Hotel Project"). The Development Agreement specifies that the Developer would assume responsibilities for design and right-of-way acquisition for the Offsite Sanitary Sewer Improvements with the City assuming the responsibility for construction.

The Frisco Economic Development Corporation (the "FEDC") has indicated a desire to participate in the construction of the Offsite Sanitary Sewer Improvements; the FEDC Board of Directors will consider and act upon authorization for the FEDC President to execute an Interlocal Agreement (the "ILA") with the City relating to the Offsite Sanitary Sewer Improvements at their December 18, 2008 Meeting. Upon approval by the FEDC Board of Directors, staff will place an item for consideration on the January 6, 2009 City Council meeting agenda to consider and approve a Resolution authorizing the City Manager to execute the ILA with FEDC. This Development Agreement is subject to the approval and execution of the ILA, and specifies that upon the City's issuance of a Notice to Proceed Letter to the Construction Contractor for construction of the Offsite Sanitary Sewer Improvements, the FEDC would tender to the City a one-time payment in the amount of \$110,000.00 to allocate towards construction of the improvements (the "FEDC Contribution").

Business Points for the Development Agreement include the following items:

- **Design of Offsite Sanitary Sewer Improvements** – Business points relating to the design of the Offsite Sanitary Sewer Improvements include the following:
 - Developer agrees to pay for the re-design of approximately 3,850 LF of 15" sanitary sewer line (currently designed) in order to upsize the capacity of the line to a 21" sanitary sewer line (and all appurtenances thereto), the design of approximately 1,150 LF of additional 21" sanitary sewer line (and all appurtenances thereto), the design of approximately 460 LF of existing sanitary sewer line (extending from the Rowlett Creek Metering Station) to upsize the capacity of the line to a 36" sanitary sewer line (and all appurtenances thereto), and for the design of the boring required for the construction of the sanitary sewer line westbound across Independence Parkway (and all appurtenances thereto). Developer agrees to have the final design complete and submitted to the City for review by December 12, 2008 (and to incorporate all of the City's review comments into the construction plans and resubmit the plans to the City by January 12, 2009); and

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- Developer agrees to arrange for the dedication of easements necessary to construct the Offsite Sanitary Sewer Improvements and to provide the City the easement documents (in a form acceptable to the City) by December 31, 2008.
- **Construction of Offsite Sanitary Sewer Improvements** – Business points relating the construction of the Offsite Sanitary Sewer Improvements include the following:
 - If the Developer completes the design and right-of-way acquisition by the Milestone Dates as stated above, the City agrees to complete the procurement process for the construction of the Offsite Sanitary Sewer Improvements. A recommendation for the Award of Bid and the consideration and adoption of a Resolution authorizing the City Manager to execute a Standard Form Agreement for Construction Services (the “Construction Agreement”) would be items for consideration on the February 10, 2009 City Council meeting agenda. The Agreement states that the City reserves the right to elect or to not elect to execute the Construction Agreement, for any reason or no reason at all; and
 - Upon execution of the Construction Agreement, the City will construct the Offsite Sanitary Sewer Improvements at its sole cost and expense, less the total of the up-front payment of Sanitary Sewer Impact Fees for the Retail Center and the FEDC Contribution.
- **Construction of the Hotel Project** – Business points relating to the construction of the Hotel Project include the following:
 - Developer agrees to obtain a permanent Certificate of Occupancy for the Hotel Project by July 1, 2010; and
 - Developer agrees to obtain a Construction Permit for the Hotel Project, in accordance with all City rules, regulations, procedures and ordinances, no later than February 10, 2009; and
 - If Developer fails to obtain a permanent Certificate of Occupancy for the Hotel Project by July 1, 2010, the City reserves the right to seek from the Developer the difference between actual construction cost less the total of the up-front payment of the Sanitary Sewer Impact Fees and the FEDC Contribution.
- **Sanitary Sewer Impact Fees for the Retail Center** – Business Points relating to the Sanitary Sewer Impact Fees for the Retail Center include the following:
 - The City estimates the Sanitary Sewer Impact Fees for the Retail Center (based upon the Preliminary Site Plan) at \$177,088.00; and

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- Upon execution of the Development Agreement, Developer agrees to tender to Frisco the Estimated Sanitary Sewer Impact Fees as a pro-rata payment towards the construction of the Offsite Sanitary Sewer Improvements; and
 - The City shall assess actual Sanitary Sewer Impact Fees for subdivision of the Site Plan for the Retail Center at the time of final plat for each subdivided parcel, and shall collect the assessed Sanitary Sewer Impact fees prior to the issuance of a building permit for each subdivided parcel; and
 - The City and Developer agree that Developer is eligible for pro rata reimbursements of the Sanitary Sewer Impact Fees collected from developers of each subdivided parcel of the Retail Center, but the amount of reimbursement shall not exceed the amount of the Estimated Sanitary Sewer Impact Fees paid up front by Developer, less the Sanitary Sewer Impact Fees for the Hotel Project; and
 - Developer agrees to submit a written request to the City for pro rata reimbursements within sixty (60) calendar days of any payment of Sanitary Sewer Impact Fees for the Retail Center.
- **Frisco Economic Development Corporation Participation** – Business points relating to the FEDC's participation include the following:
- Developer and FEDC have executed a Performance Agreement (the "Performance Agreement") for the Hotel Project; upon execution of the Development Agreement, the Developer will notify FEDC in writing of their desire to terminate the Performance Agreement; and
 - FEDC desires to execute an ILA with the City and to approve the termination of the Performance Agreement; and
 - The Development Agreement is subject to the approval and execution of an ILA between the FEDC and the City; and
 - Upon execution of the ILA, and upon City's issuance of a Notice to Proceed to the Construction Contractor for the construction of the Offsite Sanitary Sewer Improvements, FEDC would tender the FEDC Contribution to the City; and
 - If Developer fails to obtain a permanent Certificate of Occupancy issued by the City for the Hotel Project by July 1, 2010, FEDC reserves the right to seek reimbursement from the Developer for the FEDC Contribution.

Alternatives: City Council could consider the following alternatives:

- Approval of a Resolution authorizing the City Manager to execute the Development Agreement by and between the City of Frisco and Vista Franchise Holdings, LLC;
- Input towards the discussion as desired;

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- Deny approval of the Resolution and send back to staff with direction.

Financial Considerations: The Opinion of Probable Construction Cost (“OPCC”) for the Offsite Sanitary Sewer Improvements is \$1,671,473.00. Staff recommends that funding for the construction of the Offsite Sanitary Sewer Improvements come from the 2007 Certificates of Obligation. The up-front payment of the Sanitary Sewer Impact Fees for the Retail Center by the Developer (\$177,088.00) and the FEDC Contribution (\$110,000.00) will also be allocated towards the construction of the Offsite Sanitary Sewer Improvements.

Legal Review: The City Attorney’s Office has reviewed and approved both the Resolution and the Development Agreement as to form and legality.

Supporting Documents: Supporting documents include the following items:

- Project Location Map;
- Copy of Resolution;
- Copy of Development Agreement by and between the City of Frisco and Vista Franchise Holdings, LLC

Staff Recommendation: Staff recommends placement of this item on the December 16, 2008 City Council meeting agenda to consider and approve a Resolution authorizing the City Manager to execute a Development Agreement by and between the City of Frisco and Vista Franchise Holdings, LLC of Richardson, Texas for the construction of Offsite Sanitary Sewer Improvements extending from the Rowlett Creek Metering Station to Independence Parkway. Staff will be present at the meeting to address the City Council’s questions relating to this agenda item.